

mixed-finance amendment to the capital advance agreement shall be deemed to create a relationship of third party beneficiary, principal-agent, or any relationship involving HUD.

(15) *Additional certifications.* The owner's certification to:

(i) Compliance with all applicable Federal, State, or local civil rights requirements;

(ii) Compliance with all deed conditions and covenants running with the land, including the requirement not to dispose of the development without the prior written approval of HUD for the entire period that the use restrictions for the assisted housing remain in effect;

(b) *Other.* The mixed-finance owner must submit such other evidentiary materials as HUD may require.

EFFECTIVE DATE NOTE: At 68 FR 67321, Dec. 1, 2003, § 891.825 was added. This section contains information collection and record-keeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

**§ 891.828 Loan of capital advance funds to mixed-finance owner.**

Upon issuance of the firm commitment for capital advance financing, the nonprofit organization to which has been transferred the fund reservation by the sponsor, shall execute a capital advance agreement and an agreement to enter into a Project Rental Assistance Contract with HUD. Upon approval of the mixed-finance proposal and the evidentiary materials, the mixed-finance owner shall provide a Note evidencing a non-amortizing loan of the capital advance funds for a period of not less than 40 years at the program interest rate in effect on the date of the Note. The mixed-finance owner shall execute and record a use agreement, which shall include a complete legal description of the project site and which shall be accompanied by a title insurance policy or commitment insuring the validity and priority of the use agreement. Capital advance funds can be drawn down under a disbursement and escrow agreement in accordance with § 891.830.

**§ 891.830 Drawdown.**

(a) Upon its approval of the executed evidentiary materials and other documents submitted and upon determining that such documents are satisfactory, HUD may approve the drawdown of capital advance funds in accordance with the HUD-approved drawdown schedule.

(b) The capital advance funds may only be drawn down in an approved ratio to other funds, in accordance with a drawdown schedule approved by HUD. The nonprofit organization and the mixed-finance owner shall certify, in a form prescribed by HUD, prior to the initial drawdown of capital advance funds, that they will not draw down more capital advance funds than necessary to meet the pro rata share of the development costs for the 202 or 811 units. The nonprofit organization and the mixed-finance owner shall draw down capital advance funds only when payment is due and after inspection and acceptance of work covered by the draw.

(c) Each drawdown of funds constitutes a certification by the mixed-finance owner and the nonprofit organization that:

(1) All the representations and warranties submitted in accordance with this subpart continue to be valid, true, and in full force and effect;

(2) All parties are in compliance with their obligations pursuant to this subpart which, by their terms, are applicable at the time of the drawdown of funds;

(3) All conditions precedent to the drawdown of the funds by the nonprofit organization and the mixed-finance owner have been satisfied;

(4) The capital advance funds drawn down will be used only for eligible costs actually incurred in accordance with the provisions of this subpart and the approved proposal; and

(5) The amount of the drawdown is consistent with the ratio of 202 or 811 units to other units.

**§ 891.833 Monitoring and review.**

HUD shall monitor and review the development during the construction and operational phases in accordance

## **§ 891.835**

with the requirements that HUD prescribes in the mixed-finance amendment to the capital advance agreement. In order for units assisted under the 202 and 811 programs to continue to receive project rental assistance, they must be operated in accordance with the mixed-finance amendment to the capital advance agreement and all other HUD regulations and requirements. It is the responsibility of the mixed-finance owner and nonprofit organization to ensure compliance with the preceding sentence.

### **§ 891.835 Eligible uses of project rental assistance.**

(a) Section 202 or 811 project rental assistance may be used to pay the necessary and reasonable operating costs, as defined in 24 CFR 891.105 and approved by HUD, not met from project income and attributed to Section 202 or 811 units. Operating cost standards under 24 CFR 891.150 apply to developments under this part.

(b) Section 202 or 811 project rental assistance may not be used to pay for:

(1) Debt service on construction or permanent financing, or any refinancing thereof, for any units in the development, including the 202 or 811 units;

(2) Cash flow distributions to owners; or

(3) Creation of reserves for non-202 or -811 units.

(c) HUD-approved operating costs attributable to common areas or to the development as a whole, such as groundskeeping costs and general administrative costs, may be paid from project rental assistance on a pro-rata basis according to the percentage of 202 or 811 assisted units as compared to the total number of units.

### **§ 891.840 Site and neighborhood standards.**

For Section 202 or 811 mixed-finance developments, the site and neighborhood standards described at § 891.125 and § 891.320 apply to the entire mixed-finance development.

### **§ 891.848 Project design and cost standards.**

The project design and cost standards at § 891.120, with the exception of sub-

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section (c), apply to mixed-finance developments under this subpart. Sections 891.220 and 891.315 on prohibited facilities shall apply to mixed-finance developments under this subpart.

### **§ 891.853 Development cost limits.**

The Development cost limits for development activities, as established at § 891.140, apply to Section 202 or 811 units in mixed-finance developments under this subpart.

### **§ 891.855 Replacement reserves.**

(a) The mixed-finance owner shall establish and maintain a replacement reserve account for section 202 or 811 units. This account must meet all the requirements of 24 CFR 891.405.

(b) The mixed-finance owner may obtain a disbursement from the reserve only if the funds will be used to pay for capital replacement costs for the Section 202 or 811 units in the mixed-finance development and in accordance with the terms of the regulatory and operating agreement. In the event of a disposition of the mixed-finance development, or the dissolution of the owner, any Section 202 or 811 funds remaining in the replacement reserve account must remain dedicated to the Section 202 or 811 units to ensure their long-term viability, or as otherwise agreed by HUD.

(c) Subject to HUD's approval, reserves may be used to reduce the number of dwelling units in the development for the purpose of retrofitting units that are obsolete or unmarketable.

### **§ 891.860 Operating reserves.**

(a) The mixed-finance owner shall maintain an operating reserve account in an amount sufficient to cover the operating expenses of the development for a three-month period.

(b) Project income and tax credit equity may be used to fund the operating reserve account.

### **§ 891.863 Maintenance as supportive housing units for elderly persons and persons with disabilities.**

(a) The mixed-finance owner must develop and continue to operate the same number of supportive housing units for